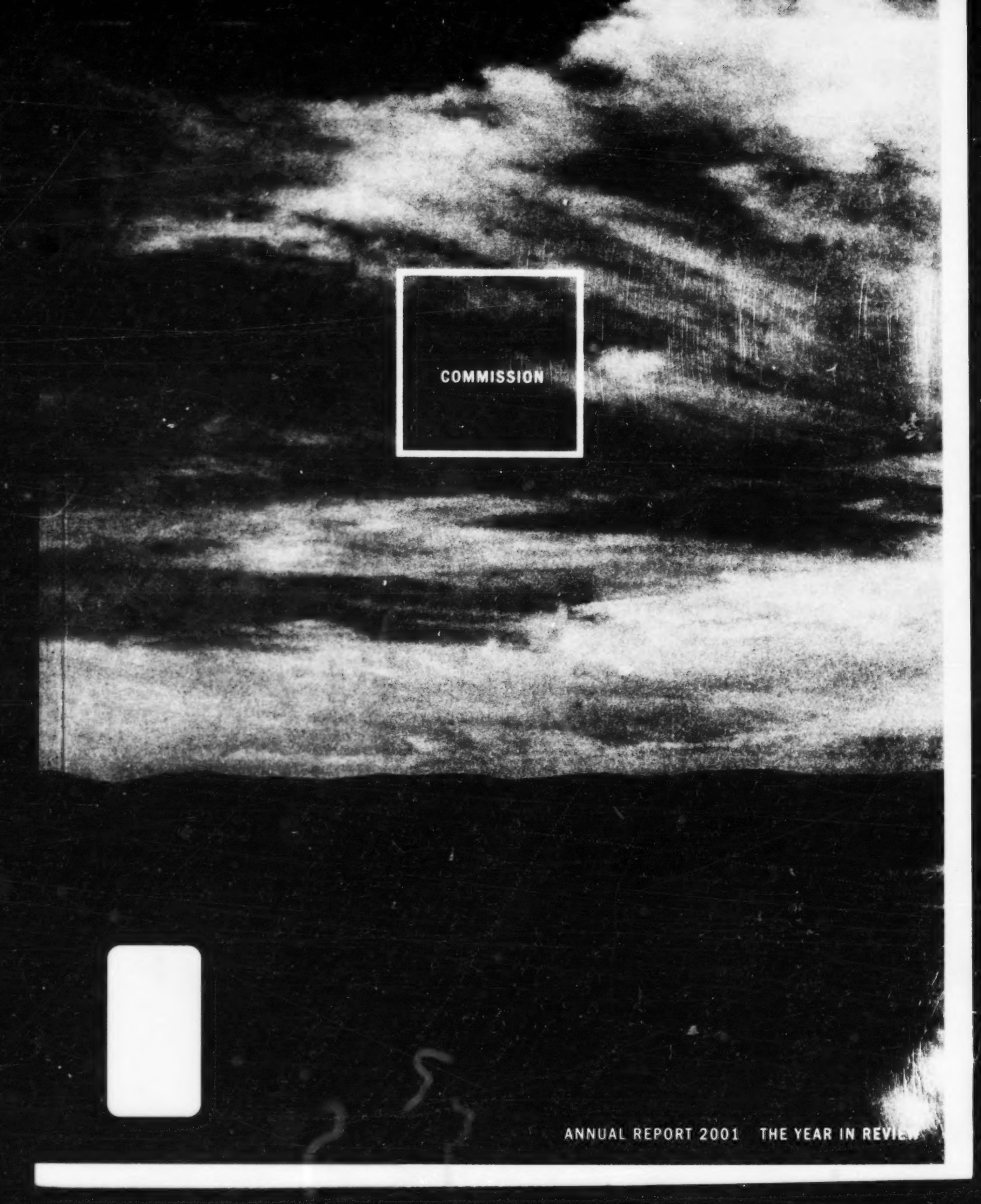
COMMISSION

# 2001

THE YEAR IN REVIEW

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Wilf Adam

Peter Lusztig

Kathleen Keating

Debra Hanuse

Miles Richardson

# Urgent action is necessary to make the treaty process more effective.

## LETTER FROM THE CHIEF COMMISSIONER

The Treaty Commission has taken the extraordinary step of including *A Review of the Treaty Process* as a distinct document within this, our eighth, annual report. The review, conducted over the past several months, confirms there is a solid foundation for treaty making in British Columbia. However, urgent action is necessary to make the treaty process more effective.

This review was an opportunity for the Treaty Commission to step back from the negotiations, look at treaty making and ask ourselves what has been accomplished, what has gone wrong and what needs fixing. The result is a plan that, if followed, will restore faith in the treaty process, bring a measure of certainty to land and resource use, and flow benefits to First Nations sooner.

There are a number of recommendations for change within these pages. Our message to the governments of Canada and British Columbia and First Nations is this: Act together on these recommendations to make the treaty process more effective.

In our last annual report we shone light on the two solitudes, highlighting the differences in vision that First Nations and the governments of Canada and British Columbia bring to the negotiating table. The gap, we explained, was huge and the challenge ahead was to bridge that gap; much of that work remains to be done. There are major unresolved issues that must be addressed if we are to make substantial progress.

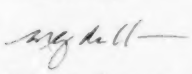
However, we should not lose sight of how much has been accomplished, the lessons we have learned and the experience we have gained — all valuable experience the parties can now bring to the negotiations. Over the past year we did make progress, primarily through interim agreements, despite a federal election, a provincial election and the installation of a new government in Victoria. With strong leadership and political will much can be accomplished in the coming year. But it will take a new approach.

While comprehensive treaties are the goal, it will be important to establish building blocks and that is best done through incremental steps. The "big bang" theory of treaty making must be laid to rest. That is one of the important lessons of the last eight years.

I offer my thanks to the commissioners and staff for their dedication and hard work during a difficult year and for their participation in this review of treaty making. There is no other undertaking so important to the future of this province.

The Treaty Commission is required to submit annually to the Parliament of Canada, the Legislative Assembly of British Columbia and the First Nations Summit a report on the progress of negotiations and an evaluation of the process. Our annual financial information has been prepared to coincide with the release of *The Year in Review* and is submitted as a separate document.

Respectfully,



Miles G. Richardson
Chief Commissioner

## REAPPOINTMENTS PROVIDE CONTINUITY, STABILITY

**December 1990**
BC Claims Task Force formed.

**June 1991**
BC Claims Task Force makes its report. The report recommends that a new relationship among First Nations, Canada and BC be established through political negotiations and makes recommendations for the achievement of that goal.

**September 21, 1992**
BC Treaty Commission Agreement among First Nations Summit, Canada and BC.

Over the past year, the parties to treaty negotiations have dealt with a federal election, a provincial election and a provincial government transition. Alongside these changes, the Principals of the treaty process — Canada, BC and the First Nations Summit — made important reappointment decisions to maintain some degree of continuity and stability in the treaty process.

Chief Commissioner **Miles Richardson** was reappointed to a three-year term by agreement of Canada, BC and the First Nations Summit. Commissioner **Wilf Adam** returns for a fourth term and **Debra Hanuse** returns for a third term by resolution of the First Nations Summit. Government of Canada appointee **Peter Lusztig** returns for a fourth term and **Kathleen Keating** continues a second term as the Government of BC appointee. The four part-time commissioners are appointed to two-year terms.

**Miles Richardson** was appointed chief commissioner in November 1998 and reappointed in August 2001. Prior to this appointment, Mr. Richardson served three years as the First Nations Summit appointee to the Treaty Commission. Mr. Richardson served on the First Nations Summit Task Group from 1991 to 1993 and the BC Claims Task Force, whose report and recommendations is the blueprint for the treaty negotiation process. He holds a Bachelor of Arts (1979) from the University of Victoria.

**Wilf Adam** was appointed to the Treaty Commission in April 1995 and re-elected in April 1997, April 1999 and March 2001. Former chief councillor of the Lake Babine Band and chair of the Burns Lake Native Development Corporation, Mr. Adam co-founded the Burns Lake Law Centre. Mr. Adam was born in Burns Lake and raised at Pendleton Bay. In 1985, he completed a course in business management at the College of New Caledonia in Prince George.

**Debra Hanuse** was appointed commissioner in November 1998 to serve the remainder of Miles Richardson's term. She was re-elected in April 1999 and March 2001. Raised in Alert Bay, Ms. Hanuse is a member of the 'Namgis Nation of the Winalagalis Treaty Group. She holds a Bachelor of Arts in Political Science from Simon Fraser University (1986), and a Bachelor of Laws from the University of British Columbia (1990). She was admitted to the Bar in 1991. For four years, she practised corporate, commercial and aboriginal law with the firm of Davis and Company. In 1995, Ms. Hanuse began her own practice where she was involved in treaty negotiations on behalf of First Nations.

**Kathleen Keating** was appointed to the Treaty Commission in April 1998 and reappointed in April 2000. Ms. Keating is a lawyer, writer, trainer and consultant in the areas of court process, plain language and the law. She is a member of the Council of the Commonwealth Lawyers Association and has served as a member of the Vancouver Police Board and the Public Library Board. She earned her Bachelor of Laws (1976) from the University of British Columbia.

**Peter Lusztig** was first appointed to the Treaty Commission in April 1995. He was reappointed in April 1997, April 1999 and March 2001. Former Professor of Finance at the University of British Columbia, Mr. Lusztig served as Dean of the Faculty of Commerce and Business Administration. In addition to his academic experience, Mr. Lusztig played an active role in public affairs as a member of one royal commission and one commission of inquiry and has served with numerous community and business boards. Mr. Lusztig earned his Bachelor of Commerce from the University of British Columbia (1954), his MBA from the University of Western Ontario (1955) and his PhD from Stanford University (1965).

## THE THREE FACES OF THE TREATY COMMISSION

First and foremost, the Treaty Commission works with the parties to keep negotiations moving forward. The Treaty Commission is also responsible for allocating negotiation support funding to First Nations and providing public information and education. The three faces of the Treaty Commission — facilitation, funding and pubic information — together promote constructive and effective negotiations.

The Treaty Commission does not negotiate treaties — that is done by each First Nation, Canada and BC.

**Facilitation**

The Treaty Commission's primary role, to facilitate treaty negotiations, encompasses these tasks:

- accepting First Nations into the treaty process and assessing when parties are ready to negotiate;
- developing policies and procedures for the six-stage treaty process;
- monitoring and reporting on the progress of negotiations and encouraging timely negotiations by helping the parties to establish meeting schedules and by monitoring deadlines;
- offering advice; chairing meetings, where requested; and assisting the parties in developing solutions and in resolving disputes.

**Funding**

The Treaty Commission allocates negotiation support funding to First Nations so that they can prepare for and carry out negotiations on a more even footing with the governments of Canada and BC. For every $100 of negotiation support funding, $80 is a loan from Canada, $12 is a contribution from Canada and $8 is a contribution from BC. The Treaty Commission's funding duties include:

- receiving and considering funding requests from First Nations;
- approving the budgets filed by First Nations in support of their workplans;
- allocating funds to First Nations in accordance with funding criteria agreed to by the Principals;
- reviewing annual audit reports and other accounting reports from First Nations that receive negotiation support funding; and
- obtaining evidence of community approval for a funding request.

Since opening its doors in May 1993 the Treaty Commission has allocated approximately $186 million in negotiation support funding to First Nations, $149 million as loans and $37 million as contributions. Total funding available to First Nations for 2001/2002 is approximately $41 million — the same as in 2000/2001.

**Public Information and Education**

Public information and education links the process of treaty making with the larger issue of long-term relationship building. As the independent "voice" of the treaty process, the Treaty Commission has an important role to play in providing timely, accurate and understandable information on historic and contemporary issues related to treaty making. To reach audiences across British Columbia, the Treaty Commission uses a variety of communications tools, for example, web site, annual report, newsletter, special publications, speeches, television documentaries and educational videos, and travelling touch-screen displays.

The Treaty Commission also develops resources and makes presentations to public schools and advanced education institutions. The governments of Canada and BC also share a major responsibility for public information. As well, the three parties in each set of negotiations — Canada, BC and First Nations — provide specific information on their negotiation tables.

**Operational Budget**

In addition to four part-time commissioners and the full-time chief commissioner, the Treaty Commission employs a staff of 13. The Treaty Commission's annual operating budget is $1.86 million – unchanged during the past seven years despite the growing intensity of negotiations and increasing responsibilities. Canada funds 60 per cent of the Treaty Commission's operating costs, and BC 40 per cent. The Treaty Commission's total operating costs from 1993 to March 31, 2002 are $16,440,679.

**April 1993**
First treaty commissioners appointed

**May 1993**
First Nations Summit Consent Resolution establishing BC Treaty Commission

**May 1993**
*BC Treaty Commission Act* passed by the BC Legislature

## SIX-STAGE TREATY PROCESS

**December 1993**
Treaty Commission begins receiving Statements of Intent: 29 Statements of Intent to negotiate treaties received from First Nations.

**June 1994**
Treaty Commission releases its first Annual Report: 41 Statements of Intent to negotiate treaties received from First Nations.

**June 1995**
Treaty Commission releases its second Annual Report: 43 Statements of Intent to negotiate treaties received from First Nations; 36 First Nations in Stage 2; 7 First Nations in Stage 3

The six-stage treaty process is set out in the BC Claims Task Force Report of 1991 and incorporated in the tripartite British Columbia Treaty Commission Agreement of 1992. The process is voluntary and open to all First Nations in British Columbia.

**Stage 1 – Statement of intent to negotiate**
A First Nation files with the Treaty Commission a statement of intent (SOI) to negotiate a treaty with Canada and BC. The SOI must identify the First Nation's governing body for treaty purposes and the people that body represents and show that the governing body has a mandate from those people to enter the process. The SOI must describe the geographic area of the First Nation's distinct traditional territory and identify any overlaps with other First Nations.

**Stage 2 – Readiness to negotiate**
The Treaty Commission must convene an initial meeting of the three parties within 45 days of receiving a statement of intent. For most First Nations, this will be the first occasion on which they sit down at a treaty table with representatives of Canada and BC. This meeting allows the Treaty Commission and the parties to exchange information, consider the criteria for determining the parties' readiness to negotiate and generally identify issues of concern. The meeting usually takes place in the traditional territory of the First Nation.

The three parties must demonstrate that they have a commitment to negotiate, a qualified negotiator, sufficient resources, a mandate and a process to develop that mandate and ratification procedures. The First Nation must have begun addressing any overlaps. The governments of Canada and BC must have a formal means of consulting with third parties, including local governments and interest groups. When the three parties have everything in place, the Treaty Commission will declare the table ready to begin negotiating a framework agreement.

**Stage 3 – Negotiation of a framework agreement**
The framework agreement is, in effect, the "table of contents" of a comprehensive treaty. The three parties agree on the subjects to be negotiated and an estimated time frame for stage four agreement-in-principle negotiations. Canada and BC engage in public consultation at the regional and local levels through regional advisory committees and sometimes through local advisory committees. Municipal governments participate in the negotiations through provincial treaty advisory committees. The parties at each negotiating table must establish a public information program that will continue throughout the negotiations.

At the provincial level, BC and Canada consult with the 31-member Treaty Negotiation Advisory Committee which represents such interests as business, labour, environment, fish and wildlife.

**Stage 4 – Negotiation of an agreement in principle**
This is where substantive treaty negotiations begin. The three parties examine in detail the elements outlined in their framework agreement. The goal is to reach agreement on each of the topics that will form the basis of the treaty. These agreements will identify and define a range of rights and obligations, including: existing and future interests in land, sea and resources; structures and authorities of government; relationship of laws; regulatory processes; amending processes; dispute resolution; financial component; fiscal relations and so on. The agreement in principle also lays the groundwork for implementation of the treaty.

**Stage 5 – Negotiation to finalize a treaty**
The treaty formalizes the new relationship among the parties and embodies the agreements reached in the agreement in principle. Technical and legal issues are resolved at this stage. A treaty is a unique constitutional instrument to be signed and formally ratified at the conclusion of Stage 5.

**Stage 6 – Implementation of the treaty**
Long-term implementation plans need to be tailored to specific agreements. The plans to implement the treaty are put into effect or phased in as agreed. With time, all aspects of the treaty will be realized and with continuing goodwill, commitment and effort by all parties, the new relationship will come to maturity.

## PROGRESS REPORT

There are 49 First Nations participating in 40 sets of negotiations in the BC treaty process.

There are 42 First Nations in Stage 4 agreement-in-principle negotiations and one First Nation in Stage 5 negotiations to finalize a treaty. Several First Nations are negotiating together.

**2 First Nations in Stage 2**

- Council of the Haida Nation
- Hupacasath First Nation

**4 First Nations in Stage 3**

- Cheslatta Carrier Nation
- Musqueam Nation
- Squamish Nation
- Quatsino First Nation (member, Winalagalis Treaty Group)

**42 First Nations in Stage 4**

- Ditidaht First Nation, and Pacheedaht Band
- Cariboo Tribal Council
- Carrier Sekani Tribal Council
- Esketemc First Nation
- Gitanyow Hereditary Chiefs
- Gitxsan Hereditary Chiefs
- Haisla Nation
- Heiltsuk Nation
- Homalco Indian Band
- Hul'qumi'num Treaty Group
- Kaska Nation
- Katzie Indian Band
- Klahoose Indian Band
- Ktunaxa/Kinbasket Treaty Council
- Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs
- Lake Babine Nation
- Lheidli T'enneh Band
- Nazko Indian Band

**Northern Regional Negotiations**

- Carcross / Tagish First Nation
- Champagne and Aishihik First Nations
- Taku River Tlingit First Nation
- Teslin Tlingit Council
- Nuu-chah-nulth Tribal Council
- Oweekeno Nation
- Sliammon Indian Band
- Snuneymuxw First Nation
- Sto:Lo Nation
- Te'Mexw Treaty Association
- Tsawwassen First Nation
- Tsay Keh Dene Band
- Tsimshian Nation
- Tsleil-Waututh Nation
- Westbank First Nation
- Wet'suwet'en Nation

**Winalagalis Treaty Group**

- Kwakiutl Nation
- 'Namgis Nation
- Da'naxda'xw Awaetlatla Nation
- Gwa'Sala-'Nakwaxda'xw Nation
- Tlatlasikwala Nation

- Yale First Nation
- Yekooche Nation

**1 First Nation in Stage 5**

- Sechelt Indian Band

## STATUS OF EACH NEGOTIATION TABLE

**December 1995**
*BC Treaty Commission Act* passed by federal Parliament

**March 1, 1996**
*BC Treaty Commission Act* proclaimed by Canada, BC and First Nations Summit resolution.

**June 1996**
Treaty Commission releases its third Annual Report: 47 Statements of Intent to negotiate treaties received from First Nations; 14 First Nations in Stage 2; 22 First Nations in Stage 3; 11 First Nations in Stage 4.

**Cariboo Tribal Council (CTC)**

There are no significant developments to report from agreement-in-principle negotiations at the CTC table, but progress has been made in interim agreement negotiations. In fall 2000, CTC signed agreements with the Ministry of Forests and the Ministry of Environment, Lands and Parks to participate in discussions on forestry and land use within CTC's traditional territory. CTC also has an economic development study underway and is continuing to build intergovernmental relations with the regional district and local governments. Also known as the Northern Secwepemc te Qelmucw, the Cariboo Tribal Council comprises four member communities: Williams Lake Band, Soda Creek Band (Xatsu'll First Nation), Canoe Creek Band and Canim Lake Band (Tsqescen). The council represents approximately 1,800 people.

**Carrier Sekani Tribal Council (CSTC)**

Agreement-in-principle negotiations at the CSTC table did not make significant progress during 2000/2001. However, in April 2001, the provincial government signed a "bridging agreement" — the blueprint for a more formal agreement — to provide funding for forestry training, development of a forest tenure proposal and business plan development. The agreement also commits the parties to examine timber availability options. CSTC, the largest First Nation in the Prince George area, represents seven communities: Burns Lake Band, Nadleh Whut'en Band, Nak'azdli Band, Saik'uz (Stoney Creek) First Nation, Stellat'en First Nation, Takla Lake First Nation, and Tl'azt'en Nation. The combined membership of the council is approximately 5,000.

**Cheslatta Carrier Nation**

Parties at the Cheslatta table have not engaged in tripartite negotiations since April 1997. Cheslatta Carrier has been occupied with negotiations outside the treaty process, including negotiation of a joint venture between Cheslatta Forest Products, Carrier Lumber Ltd. and Ootsa Resources. Cheslatta Carrier's traditional territory spans the Ootsa and Eutsuk lakes and surrounding areas. The First Nation has a membership of approximately 220.

**Council of the Haida Nation**

While tripartite negotiations have not begun with the Council of the Haida Nation, important progress has been made in land use planning. In April 2001, the Council of the Haida Nation joined seven other coastal First Nations to sign the Turning Point Protocol Agreement, which commits First Nations and the provincial government to cooperate on land use planning and implementation of interim agreements for the north and central coast. Interim agreements developed from the protocol may include training programs, economic development projects, forestry joint ventures and tourism initiatives. A separate agreement for land use planning in Haida Gwaii commits the Council of the Haida Nation and BC to establish a cooperative forest council; explore options for timber transfer and access; develop joint ventures between Haida and existing forest companies; and develop sustainable ecosystem planning. Located on Haida Gwaii, also known as the Queen Charlotte Islands, the council has 3,575 members.

**Dididaht First Nation/Pacheedaht Band**

Agreement-in-principle negotiations have not made progress at the Ditidaht/Pacheedaht table since Canada and BC tabled their joint settlement offer in October 1999. The offer included 1,802 hectares of land and $17 million. However, in February 2001, three interim agreements were signed with Dididaht/Pacheedaht: funding for forestry training and business development, resource planning and governance skill development. Negotiating at a common table since August 1997, Ditidaht/Pacheedaht has a combined membership of 740. The First Nations' traditional territory spans the southwest corner of Vancouver Island.

**Esketemc First Nation**

Negotiations at the Esketemc table continue to focus on forestry and governance issues, including a protocol with the Ministry of Forests. In early 2001, Esketemc signed the "Community-Based Justice Initiative for Fish and Wildlife Offences" with the Ministry of Environment, Lands and Parks, the

Department of Fisheries and Oceans, RCMP and the Ministry of Attorney General. Signatories to the agreement will cooperate to develop alternative, community-based enforcement options for the people of the Esketemc First Nation. Esketemc First Nation has approximately 640 members with traditional territory spanning the Alkali Lake area southwest of Williams Lake.

**Gitanyow Hereditary Chiefs**

During 2000 and 2001, tripartite negotiations at the Gitanyow table focused on fisheries and wildlife for a future agreement in principle. In November 2000, Gitanyow endorsed a wildlife stewardship project, which will provide training for a hunter designation program and enable Gitanyow to deliver information to the provincial wildlife branch. In May 2001, Gitanyow, Canada and BC signed a Memorandum of Understanding (MOU) enabling Gitanyow to begin rehabilitating the Kitwanga River. As part of the agreement, Gitanyow members will be trained to administer rehabilitation programs, including watershed reconstruction and fish sampling. Gitanyow's traditional territory spans the middle reaches of the Nass River. The First Nation has approximately 600 members.

**Gitxsan Hereditary Chiefs**

In March 2001, BC lifted its formal suspension of negotiations with Gitxsan, and the parties are now preparing to resume negotiations. BC's decision comes after Gitxsan indicated its desire to resume tripartite negotiations in October 2000. The BC government suspended negotiations with Gitxsan in February 1996 due to recommencement of the *Delgamuukw* appeal in the Supreme Court of Canada. The *Delgamuukw* decision, handed down by the Supreme Court in 1997, confirmed the existence of aboriginal title in British Columbia and recognized this title as being a right to the land itself — not just the right to hunt, fish and gather. Gitxsan has 5,065 members with traditional territory around the upper reaches of the Skeena and Nass rivers.

**Haisla Nation**

Little progress was made in agreement-in-principle negotiations at the Haisla table this year, but there are developments to report in interim agreements. In April 2001, Haisla Nation joined seven other First Nations to endorse the Turning Point Protocol Agreement, which commits First Nations and the provincial government to cooperate on land use planning and implementation of interim agreements for the north and central coast. Interim agreements developed from the protocol may include training programs, economic development projects, forestry joint ventures and tourism initiatives. Haisla also signed an interim agreement with Canada and BC in March that will promote economic development and joint venture opportunities within the forest industry. Haisla Nation has 1,450 members, with traditional territory around the Kitimat area and the north coast.

**Heiltsuk Nation**

Heiltsuk Nation has taken time out from tripartite negotiations for the next few months to review its mandate to negotiate an agreement in principle. Prior to this, Heiltsuk joined seven other First Nations to endorse the Turning Point Protocol Agreement, which commits First Nations and the provincial government to cooperate on land use planning and implementation of interim agreements for the north and central coast. As part of the Turning Point agreement, Heiltsuk committed to the Central Coast land use plan, which protects 600,000 hectares of land ranging from Knight Inlet to Princess Royal Island — home of the Kermode "spirit" bear. Heiltsuk also received funding for forestry business development. Located on the central coast, Heiltsuk has approximately 2,000 members.

**Homalco Indian Band**

Over 2000/2001, Homalco Indian Band focused its negotiation efforts on governance issues. Specifically, Homalco wants to start building self-governance capacity in preparation for implementing a treaty. Homalco comprises 400 people with traditional territory ranging from Campbell River and Bute Inlet watershed to Chilko Lake.

**June 1997**

Treaty Commission releases its fourth Annual Report. 50 Statements of Intent to negotiate treaties received from First Nations; 11 First Nations in Stage 2; 12 First Nations in Stage 3; and 27 First Nations in Stage 4.

**December 11, 1997**

Supreme Court of Canada decision in the *Delgamuukw* case confirms aboriginal title exists in British Columbia, that it's a right to the land itself — not just the right to hunt, fish and gather — and when dealing with Crown land, the government must consult with and may have to compensate First Nations whose rights are affected.

**April 1998**
At the urging of the Treaty Commission, the Principals begin a series of meetings to address major issues required to reinvigorate the treaty negotiation process in the wake of *Delgamuukw* case. Principals agree that tripartite negotiations within the BC treaty process will continue while the review is underway.

**June 1998**
Treaty Commission releases its fifth Annual Report: 51 Statements of Intent to negotiate treaties received from First Nations: 3 First Nations in Stage 2; 12 First Nations in Stage 3; and 36 First Nations in Stage 4.

**Hul'qumi'num Treaty Group**
Hul'qumi'num resumed tripartite negotiations in July after a one-year hiatus. During this past year, Hul'qumi'num focused on internal restructuring and interim agreements, including an historic land protection measure signed by Cowichan Tribes, Hul'qumi'num Treaty Group, Canada and BC. The agreement sets aside 1,700 hectares of Crown land between Duncan and Lake Cowichan known as Hw'te shutsun or the Hill 60 sacred site. The Hill 60 site will be held for two years, with renewal clauses, and may be incorporated into a comprehensive treaty. Cowichan Tribes – a member of Hul'qumi'num Treaty Group – also endorsed a forestry-related agreement, which includes an invitation to submit an application for a community forest pilot project. Hul'qumi'num comprises 5,255 people and six communities: Chemainus, Cowichan Tribes, Halalt, Lake Cowichan, Lyackson and Penelakut. The First Nation's traditional territory encompasses the area around Duncan, north to Ladysmith, east to the Gulf Islands and west to Cowichan Lake.

**Hupacasath First Nation**
Hupacasath First Nation entered the treaty process on November 23, 2000 when the Treaty Commission officially received its statement of intent. The parties held their initial meeting on March 5, 2001. Hupacasath is a member of the Nuu-chah-nulth Tribal Council, and previously had been negotiating as part of the tribal council. Located in Port Alberni, Hupacasath has 215 members.

**Kaska Nation**
Kaska Nation made progress in interim agreement negotiations this year. In December 2000, Kaska signed an agreement with Canada and BC, which provides funding for Kaska to develop joint ventures with local forestry companies and to explore training and job shadowing opportunities. In addition, Kaska will work with the Ministry of Forests on forest management and planning in Kaska's traditional territory. Kaska also has a land use study and a guide outfitter business feasibility study underway. Kaska Nation includes Kaska Dena Council, Liard First Nation and Ross River Dena Council – with a combined membership of approximately 3,000. The First Nation's traditional territory ranges from north central BC to the Yukon and Northwest Territories.

**Katzie Indian Band**
Katzie Indian Band signed a framework agreement on March 12, 2001, which moved negotiations to stage four. Tripartite negotiations and working groups are underway at this table to discuss fish, land management and intergovernmental relations. In addition, Katzie signed a governance development agreement with Canada and BC, which includes research, community consultation and job shadowing projects. Katzie First Nation comprises approximately 460 members, with traditional territory including Pitt Lake, Pitt River, Surrey, Langley, New Westminster and Vancouver.

**Klahoose Indian Band**
Negotiations at the Klahoose table focused primarily on interim agreement negotiations during 2000 and 2001. In March 2001, Canada, BC and Klahoose signed an agreement committing the parties to pursue community-based forest management for Cortes Island. Klahoose is now considering how to proceed with negotiations. Klahoose has 285 members located north of Sechelt on the south coast.

**Ktunaxa/Kinbasket Treaty Council (KKTC)**
KKTC negotiations are moving forward on wildlife, culture and heritage and other issues. KKTC has approximately 1,100 members and includes Columbia Lake Band, Lower Kootenay Band, Shuswap Indian Band, St. Mary's Indian Band and Tobacco Plains Band. The territory of the Ktunaxa people extends from Columbia River south to Missoula, Montana, west to Bonner's Ferry, Idaho, north to the Upper Arrow Lakes area of British Columbia and east to the Rocky Mountains.

**Lake Babine Nation**

In April 2001, Lake Babine signed a framework agreement moving the First Nation into stage four negotiations. At the same time, Lake Babine is focusing on community consultation. Located near Burns Lake, Lake Babine has 1,860 members.

**Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs**

This spring the council of chiefs submitted an amended statement of intent to the Treaty Commission, reflecting the withdrawal of Mamalilikulla-Qwe-Qwa'Sot'Em from the council. In addition to a lands study signed March 2001, the council has working groups underway to address fish, lands and governance issues. The council of chiefs includes five communities with a combined membership of approximately 2,000: K'ómoks, Kwiakah, Tlowitsis, Wei Wai Kai and Wei Wai Kum. The First Nation is located in the Campbell River-Courtenay-Comox region.

**Lheidli T'enneh Band**

Negotiations at the Lheidli T'enneh table made progress during the latter part of 2000. A joint settlement offer was tabled to the First Nation in August 2000, including 2,903 hectares of land and $7.5 million. Two interim agreements signed in December 2000 will enable Lheidli T'enneh to provide forestry and business training through a band-owned education institute and participate in establishing a wildlife advisory committee. Located in the Prince George area, with traditional territory stretching to the Alberta border, Lheidli T'enneh has approximately 260 members.

**Musqueam Nation**

The Musqueam Nation's focus this year has been on non-treaty issues. However, Musqueam is working on finalizing its framework agreement so that formal negotiations may resume, as well as discussing possible interim measures agreements. Compensation issues continue to stall negotiations at this table. Musqueam Nation comprises 1,000 people, with traditional territory spanning the Greater Vancouver area.

**Nazko Indian Band**

Key issues at the Nazko negotiation table include forestry, access and environmental assessment/management issues. Nazko's traditional territory is northwest of Quesnel and southwest of Prince George. The First Nation has approximately 280 members.

**Northern Regional Negotiation Table (NRN)**

In 1999, Canada and BC outlined their preliminary positions on land, cash and other provisions that may be included in a comprehensive treaty. A response by NRN is anticipated. In the meantime, NRN is considering options for interim agreements. NRN member Champagne/Aishihik First Nations is not actively participating in negotiations at this time. NRN comprises four First Nations with traditional territories spanning the BC-Yukon border: Champagne and Aishihik First Nations, Teslin Tlingit Council, Taku River Tlingit First Nation and Carcross/Tagish First Nation. These four First Nations represent approximately 2,000 people.

**Nuu-chah-nulth Tribal Council**

In March 2000, Nuu-chah-nulth, Canada and BC initialled an agreement in principle, which was based on the largest land and cash offer yet tabled under the BC treaty process. When Nuu-chah-nulth took the agreement back to its communities for ratification, six of 12 member First Nations deemed the agreement insufficient to meet their needs. The agreement included 550 square kilometres of land, $243 million, a share in the commercial fishery and forestry and a Meares Island Trust to be jointly managed by Nuu-chah-nulth and the governments of Canada and BC. Also outlined in the agreement was a central Nuu-chah-nulth government and elimination of income tax exemptions after 12 years. Nuu-chah-nulth is now considering how to proceed with negotiations in light of the failure to ratify the agreement. Nuu-chah-nulth Tribal Council comprises 12 communities and 6,500 people, making it one of the largest First Nations in the province. Nuu-chah-nulth's traditional territory ranges from Barkley Sound to Kyuquot Sound, including Tofino and Clayoquot Sound.

**August 4, 1998**
The Nisga'a Nation, Canada and BC sign first modern treaty in BC, negotiated outside of the BC treaty process.

**March 1999**
BC Supreme Court decision in the Haida case confirms that when the governments of Canada and BC enter into treaty negotiations they are obliged to conduct those negotiations in good faith.

**April 16, 1999**
Sechelt Indian Band, Canada and BC sign first agreement in principle under the BC treaty process.

**June 1999**
Treaty Commission releases its sixth Annual Report: 51 Statements of Intent to negotiate treaties received from First Nations; 1 First Nation in Stage 2; 12 First Nations in Stage 3; 37 First Nations in Stage 4; and 1 First Nation in Stage 5.

**April 13, 2000**
The Nisga'a treaty becomes law.

**June 2000**
Treaty Commission releases its seventh Annual Report: 51 Statements of Intent to negotiate treaties received from First Nations; 1 First Nation in Stage Two; 11 First Nations in Stage 3; 38 First Nations in Stage 4; and 1 First Nation in Stage 5.

**Oweekeno Nation**

This past year, Oweekeno stepped back from tripartite negotiations to build community resources and strengthen governance. The Oweekeno table has been inactive since 1999, but is expected to resume negotiations later this year. Oweekeno has approximately 210 members with traditional territory around the central coast, south of Bella Coola.

**Sechelt Indian Band**

Sechelt Indian Band, the first signatory to an agreement in principle under the BC treaty process, spent this past year in internal consultations to decide if the agreement in principle can form the basis for future negotiations. Specifically, Sechelt is concerned with the amount of land included in the agreement, as well as certainty, taxation, cash, resource sharing and aboriginal rights issues. Tripartite negotiations have not resumed at this table since October 2000, but several meetings were convened to discuss opportunities to build on the agreement in principle. Sechelt has been exercising self government since 1986 when it endorsed the first self-governance agreement in Canada — *the Sechelt Indian Band Self-Government Act*. Located on the south coast, Sechelt has approximately 1,025 members.

**Sliammon Indian Band**

In February 2001, Sliammon initialled an agreement in principle (AiP) with the governments of Canada and BC, including $24.4 million, 5,000 hectares of land, self-governance provisions and a 12-year elimination period for income tax exemptions. Subsequently, the Ministry of Forests issued two timber licences within potential treaty settlement lands. Sliammon notified the provincial government that they would not move ahead with a ratification vote until the licences were removed. On August 27, the *Timber Sale Replacement (Sliammon First Nation) Act* passed, effectively cancelling the timber licences. Sliammon will take the initialled AiP back to its community for ratification. Prior to the AiP, Sliammon signed a tourism training agreement and four land and resource development agreements. Sliammon's traditional territory spans the Powell River area, Gulf Islands, Courtenay and Desolation Sound. Sliammon has approximately 855 members.

**Snuneymuxw First Nation**

The Snuneymuxw table continues to deal with the challenge of negotiating a treaty in an urban setting with limited available Crown land. In February 2001, the parties to the Snuneymuxw table released a draft agreement in principle for consultation purposes. Local government, in particular the City of Nanaimo and Gabriola residents, strongly opposed private property being included in the draft agreement. Responding to local concerns, the BC government did not table an anticipated land and cash offer. The Treaty Commission issued a detailed report to the Principals in July 2001 outlining events at the table and indicating that progress on Snuneymuxw is critical to demonstrate trust. Negotiations are expected to proceed now that the new provincial government has announced it will reconsider the issue of private land. Snuneymuxw also signed several interim agreements during 2000 and 2001 including repatriation of Snuneymuxw human remains held in the Royal British Columbia Museum, forestry training, tourism training and regional planning. Snuneymuxw's traditional territory ranges from the east coast of Vancouver Island — including Gabriola Island, Mudge Island, and other adjacent islands — to the Nanaimo River watershed. Snuneymuxw has approximately 1,250 members.

**Squamish Nation**

Over the past year, Squamish Nation focused on negotiations outside the treaty process. In March 2001, Squamish and Lil'wat Nation signed a protocol agreement committing the parties to identify issues of mutual concern within their traditional territories, explore economic opportunities and consider shared jurisdiction and co-management. Squamish Nation's traditional territory ranges from the Lower Mainland to Howe Sound and the Squamish Valley watershed. The First Nation has approximately 3,000 members.

**Sto:Lo Nation**

Agreement-in-principle negotiations at the Sto:Lo table are moving slowly, but interim agreement negotiations are progressing. In particular, Sto:Lo wants a more meaningful role in forestry in their traditional territory, a share in the commercial fishery, access to crown land for gravel extraction and funding for language development. Sto:Lo's traditional territory includes the Fraser Valley, much of the Lower Mainland and the Harrison Lake watershed. Sto:Lo Nation comprises 17 communities, representing approximately 3,230 people.

**Te'Mexw Treaty Association**

Te'Mexw Treaty Association continues to deal with the challenge of addressing Douglas Treaty rights within a modern treaty process. The Douglas Treaties, signed in the 1850s by 14 Vancouver Island First Nations, included land, fishing and hunting provisions. Tripartite negotiations continued this year at the Te'Mexw table, culminating in Te'Mexw's comprehensive proposal to conclude an agreement in principle. In their general response to the March proposal, Canada and BC noted that they would continue discussion around topics defined in the proposal and develop a detailed response to specific items. Te'Mexw encompasses five communities with a combined membership of 1,180. The First Nation's traditional territory spans the southern end of Vancouver Island.

**Tsawwassen First Nation (TFN)**

The TFN table continues to face the challenge of negotiating a treaty in an urban area with limited available Crown land. In July 1999, TFN made a proposal to Canada and BC, which called for $37.5 million and 1,400 hectares of land. In January 2001, BC tabled a counter-proposal to TFN that included 397 hectares of land and $10 million. Canada endorsed the counter-proposal in April. TFN will be engaged in substantive negotiations throughout the fall. While agreement-in-principle negotiations continue, TFN is moving forward with interim agreements. In March, TFN released a cultural heritage study, which documents more than 1,100 cultural heritage sites, many of which are within Tsawwassen's reserve land. TFN has two additional interim agreements — a community planning study and an economic development study. TFN's traditional territory spans the Fraser River Delta to Point Roberts and Saltspring Island and extends to Pitt Lake. The First Nation has approximately 270 members.

**Tsay Keh Dene Band**

Canada and BC tabled a joint offer to Tsay Keh Dene on March 8, 2001 including $5 million, 11,975 hectares of land and self-governance provisions. On April 10, 2001 Tsay Keh Dene rejected the land and cash component of the offer, but agreed to continue negotiations on other components included in the offer. Northeast of Prince George, Tsay Keh's traditional territory spans north to Mount Trace, west to South Pass Peak, south to the Nation River, and east to Mount Laurier. The First Nation has approximately 300 members.

**Tsimshian Nation**

Over the past year, negotiations with Tsimshian Nation focused mainly on land use planning, fish and forestry issues. The culmination of these efforts is Tsimshian's endorsement of a protocol agreement on land use planning and interim measures, guided by an earlier tripartite accord on land and resources. The accord commits the parties to cooperate in developing community-based land use plans and to negotiate interim agreements on forestry, aquaculture, eco-tourism and fisheries. Tsimshian Nation comprises seven communities, representing 7,000 people. Traditional territories for the First Nation span the northwest coast, including Prince Rupert and Terrace.

**Tsleil-Waututh Nation**

Land issues have dominated negotiations with Tsleil-Waututh Nation over the past year. The pace of negotiations has been slow as the parties attempt to reconcile their treaty visions. At the same time, Tsleil-Waututh signed a non-binding protocol agreement with the District of North Vancouver to protect archaeological resources in Cates Park. Tsleil-Waututh

**February 2001**

Sliammon Indian Band, Canada and BC initial an agreement in principle including 5, 000 hectares of Crown land, $24.4 million and self-governance provisions.

**March 2001**

Nuu-chah-nulth Tribal Council, Canada and BC initial an agreement in principle in the treaty process, including 550 square kilometres of land on the west coast of Vancouver Island, $243 million and a Meares Island Trust to be jointly managed by Nuu-chah-nulth, and the provincial and federal governments.

is located in the North Vancouver area and has approximately 135 members.

**March 2001**
Canada, BC, Cowichan Tribes and Hul'qumi'num Treaty Group endorse an historic land protection agreement setting aside 1,700 hectares of Crown land known as the Hill 60 sacred site.

**Westbank First Nation**
Westbank First Nation focused most of its efforts this year on a landmark self-government agreement, which is scheduled for ratification this September. Westbank began bilateral self-government negotiations with Canada in 1990 and signed a self-government agreement in principle in July 1998. Negotiations continue for an interim forestry agreement, as agreed upon in a letter of understanding signed by Westbank, Canada and BC in June 2000. The parties will be exploring other interim measures, including land protection, over the next few months. Located in the Kelowna area, Westbank has approximately 560 members.

**April 2001**
Gitga'at First Nation, Haida Nation, Haisla Nation, Heiltsuk Nation, Kitasoo/Xaixais First Nation and Metlakatla First Nation endorse Turning Point Protocol Agreement on land use planning and interim measures. Agreement commits the parties to work together on central coast, Haida Gwaii and north coast land use plans and on implementing interim agreements. Interim agreements developed from the protocol may include training programs, economic development projects, forestry joint ventures and tourism initiatives.

**Wet'suwet'en Nation**
Following signing of the April 2000 political accord committing Canada, BC and Wet'suwet'en to work together on land, resource and economic development issues, negotiations have been progressing, but with no significant developments to report. Wet'suwet'en Nation and Gitxsan Hereditary Chiefs appealed the landmark *Delgamuukw* case to the Supreme Court of Canada. The *Delgamuukw* decision, handed down in 1997, confirmed the existence of aboriginal title in British Columbia and recognized this title as being a right to the land itself — not just the right to hunt, fish and gather. The Wet'suwet'en traditional territory spans the Bulkley River drainage area in northwest BC The First Nation has approximately 2,200 members.

**Winalagalis Treaty Group**
Negotiations are continuing at the Winalagalis Treaty Group table with the primary focus on fish and land protection issues. Winalagalis comprises six First Nations — Kwakiutl Nation, 'Namgis Nation, Da'naxda'xw Awaetlatla Nation, Gwa'Sala-'Nakwaxda'xw Nation, Tlatlasikwala Nation and Quatsino First Nation — representing 3,150 people. The First Nation's traditional territory spans the north end of Vancouver Island and the Knight Inlet area.

**Yale First Nation**
Negotiations with Yale First Nation are moving at a slow pace. Yale's overlap with Sto:Lo needs to be addressed. Fisheries management and land protection continue to be important areas of focus at this table. Yale's traditional territory encompasses the area around Yale, which is north of Hope. Yale First Nation has approximately 135 members.

**Yekooche Nation**
Tripartite negotiations at the Yekooche table for 2000/2001 focused on interim agreements for governance, fish, forestry and capacity development. Yekooche continues to build internal capacity following the appointment of a new negotiating team and adoption of an electoral code in 1999. Located northwest of Fort St. James, Yekooche has 130 members.

**First Nations withdrawing from the treaty process**
When First Nations enter the treaty process, they do so at the direction of their membership. Participation is voluntary and First Nations may decide to leave at any time during negotiations. This year, three First Nations, at the direction of their memberships, decided to withdraw from the treaty process.

**In-SHUCK-ch**
In-SHUCK-ch/N'Quat'qua entered the treaty process in March 1995 when the Treaty Commission formally received its statement of intent. Following the joint land and cash offer made by Canada and BC in October 1999, In-SHUCK-ch/N'Quat'qua stopped treaty negotiations to consider how negotiations should proceed. Following this hiatus, N'Quat'qua withdrew from the In-SHUCK-ch/N'Quat'qua governing body, thereby invalidating the 1995 statement of intent.

With the assistance of the Treaty Commission, member nations Douglas, Samahquam and Skookumchuk continued to address their own governance challenges and revisited their mandate for treaty negotiations. However, the member nations were unable to resolve internal issues at this time. The Treaty Commission returned the In-SHUCK-ch/N'Quat'qua

Statement of Intent in August 2001 and advised the member nations that it is available to assist them in the event they wish to resume negotiations.

The three member nations – Douglas, Samahquam and Skookumchuk – comprise 720 members. In-SHUCK-ch's traditional territory surrounds the Lillooet area.

**Ts'kw'aylaxw First Nation**

Ts'kw'aylaxw First Nation entered the treaty process in May 1994 when the Treaty Commission formally received its statement of intent. The parties signed a framework agreement in October 1996.

As early as 1995, the parties began discussing the possibility of an interim agreement to protect Ts'kw'aylaxw interests in Pavilion Creek watershed — an area critical to a potential treaty. Ts'kw'aylaxw was concerned about logging plans for the watershed. No agreements were reached as a result of these discussions.

Ts'kw'aylaxw tabled a comprehensive proposal in November 1996. Early in 1999, the parties agreed to negotiate land, resources and cash. In May 2000, Canada and BC presented Ts'kw'aylaxw with a general outline of the land and cash components that might be included in a future treaty. Land and cash included in the proposal was much less than Ts'kw'aylaxw had hoped for and members began considering whether they should continue negotiating and accumulating further debt.

Ts'kw'aylaxw scheduled a community referendum July 2000 to test their mandate for negotiations. After more than six years of negotiations, the Ts'kaw'aylaxw membership directed their chiefs and council to withdraw from treaty negotiations. Ts'kw'aylaxw was the first First Nation to withdraw so late in the six-stage process having reached substantive agreement-in-principle negotiations. In accordance with their members' decision, the Treaty Commission returned Ts'kw'aylaxw's Statement of Intent November 23, 2000.

Ts'kw'aylaxw First Nation is located in Pavilion between Lillooet and Cache Creek with a population of more than 400 people.

**Xaxli'p First Nation**

Xaxli'p First Nation entered the treaty process in December 1993 when the Treaty Commission officially received its statement of intent. The parties signed a framework agreement in November 1997.
For the next two years, Xaxli'p focused on internal research including substantial work on a traditional use study and an ecosystem-based plan for their territory. The First Nation resumed active negotiations in July 2000.

Following that meeting and through the fall and winter of 2000/2001, the parties at the Xaxli'p table worked towards interim agreements, including a water quality study and community forest pilot agreement. Notwithstanding what was achieved in this short time, the Xaxli'p membership decided at a community meeting in late March 2001 to withdraw from treaty negotiations.

Xaxli'p First Nation, also known as the Fountain Band and a member of the Stl'atl'imx Nation, is located in the Fountain Valley near Lillooet. Xaxli'p has approximately 700 members.

**April 2001**

As part of the Turning Point Agreement, a Central Coast Land Management Plan is endorsed by First Nations, forestry companies, community groups, environmentalists and truck loggers. Agreement protects 600,000 hectares of Crown land ranging from Knight Inlet to Princess Royal Island and defers logging on an additional 900,000 hectares of Crown land. Signatories make a commitment that future development must be eco-friendly and benefit local native and non-native communities.

**September 2001**

Treaty Commission releases its eighth Annual Report: 49 First Nations participating at 41 sets of negotiations; 2 First Nations in Stage 2; 4 First Nations in Stage 3; 42 First Nations in Stage 4; and 1 First Nation in Stage 5. Sixty interim agreements signed since February 2000 to provide immediate benefits to First Nations while negotiations continue.

## RESOURCES

A Resource Guide is available from the Treaty Commission at www.bctreaty.net/files/resources.html. To obtain copies of BC Treaty Commission publications or to inquire about other treaty-related resources, please call 1 800 665 8330 or 604 482 9200 or e-mail info@bctreaty.net.

**Official Documents**

***British Columbia Treaty Commission Agreement*** (September 21, 1992). Available on-line at www.bctreaty.net/files/bctcagreement.html.

***The Report of the British Columbia Claims Task Force*** (June 28, 1991). Available on-line at ***www.aaf.gov.bc.ca/aaf/pubs/bcctf/toc.htm.***

**Publications**

BC Treaty Commission newsletter *Update* and four brochures: ***A lay person's guide to Delgamuukw, After Delgamuukw, Treaty Commission and Why Treaties?*** Available on-line at www.bctreaty.net/files/publications.html. Hard copies also available.

Funding Fact Sheet. Available on-line at www.bctreaty.net/files/newsreleases.html. Hard copies also available.

Federal Treaty Negotiation Office newsletter ***Treaty News***. Available at www.inac.gc.ca or by calling 1 800 665 9320 or 604 775 7114.

Ministry of the Attorney General and Ministry Responsible for Treaty Negotiations publications available at www.gov.bc.ca/aaf or by calling 1 800 880 1022.

***Understanding the B. C. Treaty Process***, 2nd edition. Available by calling the First Nations Summit at 604 990 9939.

**Videos**

***What's the deal with Treaties?*** A BC Treaty Commission Production, 2000. Available on-line at www.bctreaty.net
Copies also available.

***Making Treaties in BC***, Motion Visual Productions, 1998. Available in limited quantities from the Treaty Commission.

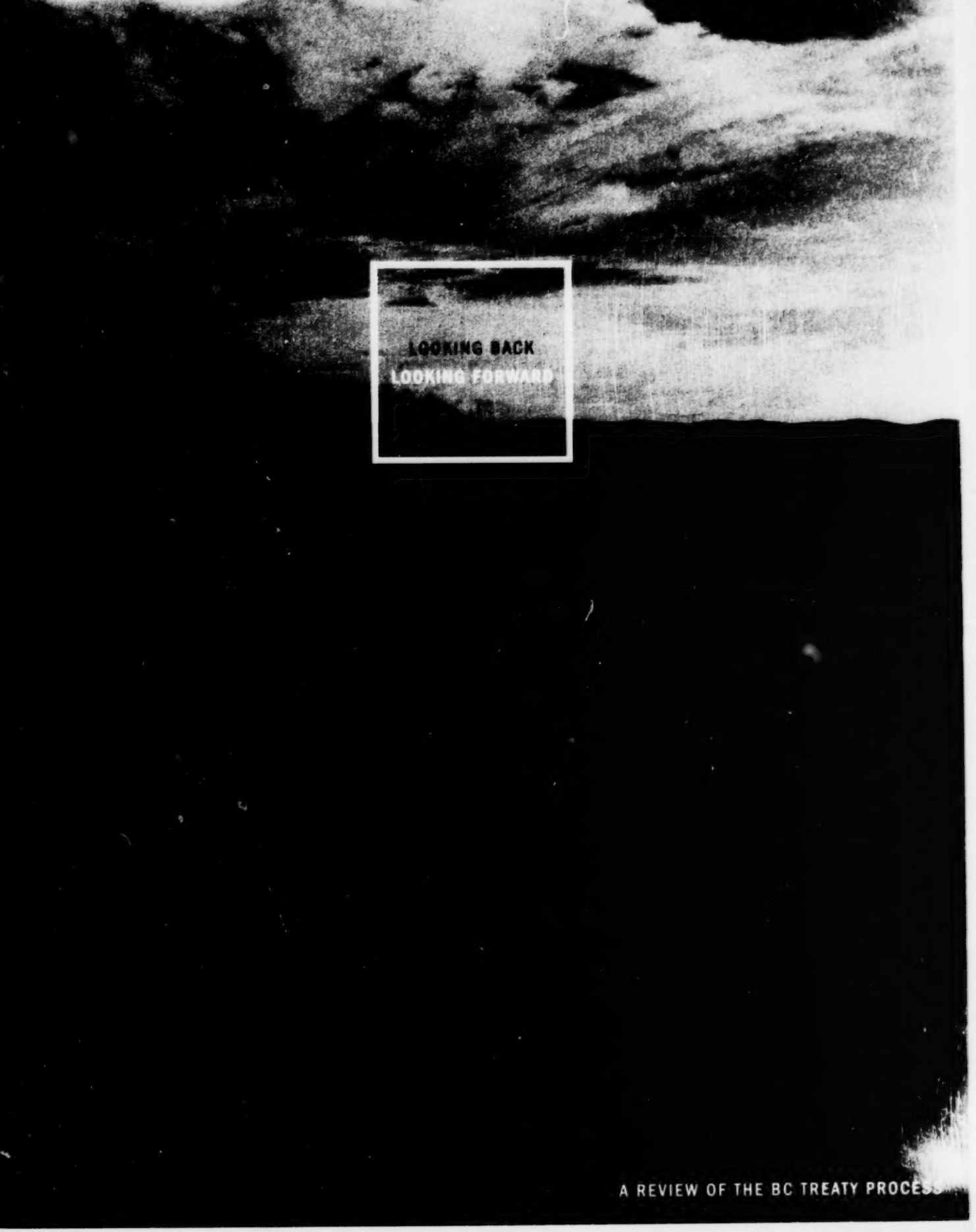
**Recommended reading**

***Prospering Together: The Economic Impact of Aboriginal Title Settlements in BC.*** Dr. Roslyn Kunin et al. Laurier Institution, 1998.

***Speaking Truth to Power: A Treaty Forum.*** Joint publication by Law Commission of Canada and Treaty Commission, March 2001. Available on-line at www.lcc.gc.ca/en/ress/part/200103/contents.html. Hard copies also available.

***Treaty Talks in British Columbia: Negotiating a mutually beneficial future.*** 2nd edition Chris McKee. UBC Press, 2000.

***What's the deal with treaties? A lay person's guide to treaty making in British Columbia.*** A BC Treaty Commission publication, 2000. Available on-line at www.bctreaty.net/education/treatyhandbook.html. Hard copies also available.




A REVIEW OF THE BC TREATY PROCES

# LOOKING BACK

LOOKING FORWARD

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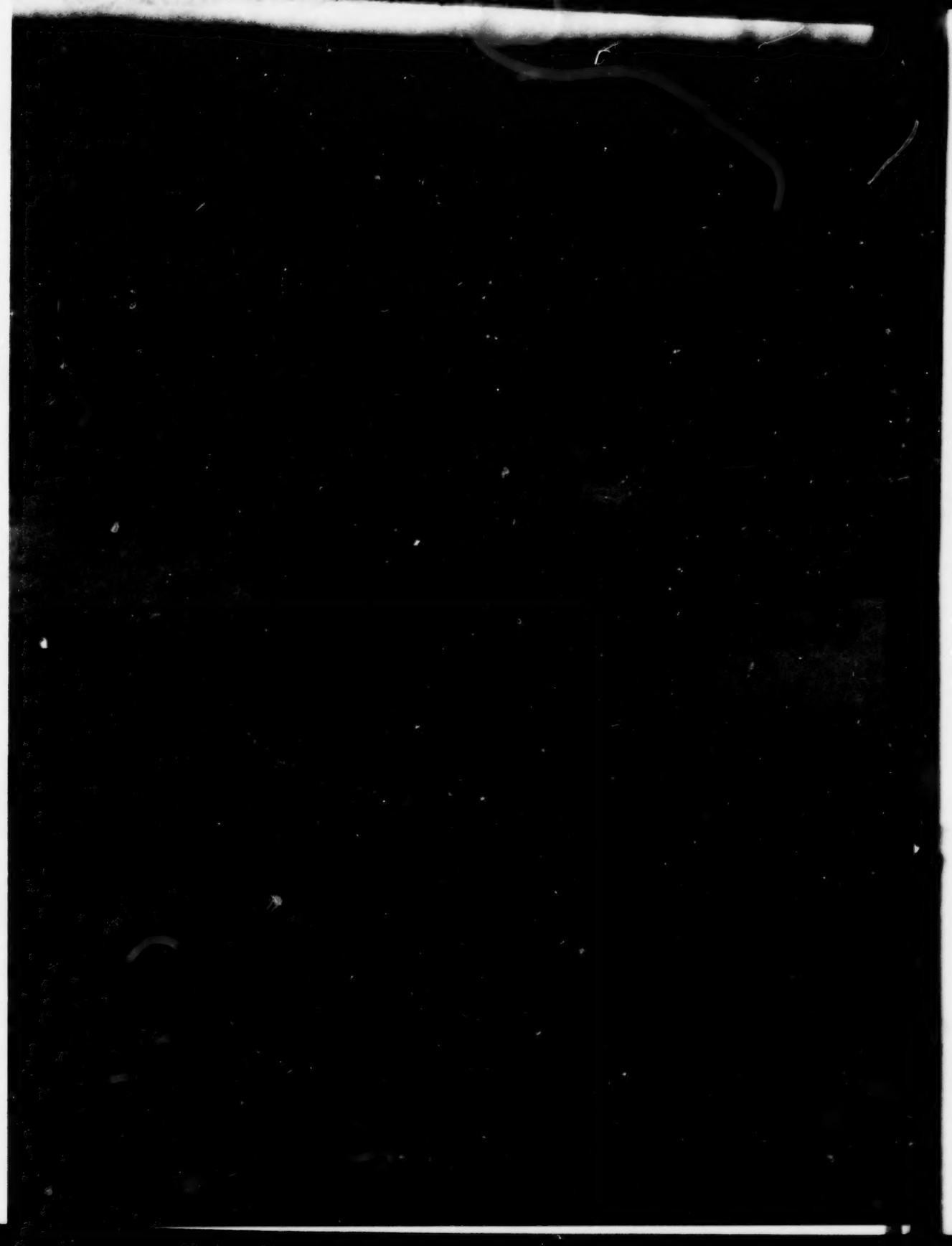

# Our expectations for comprehensive treaties were unrealistic. We tried to accomplish too much too soon.

## A TREATY IS A PROCESS NOT AN EVENT

**A hard look at treaty negotiations in BC**

In 1991 First Nations, the governments of Canada and British Columbia agreed to a made-in-BC treaty process for resolving the dispute over title to land in this province. Through the process established by this agreement, Canada and BC agreed to negotiate treaties with willing First Nations in British Columbia. In 1993 the Treaty Commission opened its doors to accept First Nations into the treaty process. Although there has been significant progress over the past eight years, there are no treaties. It's no surprise then that in 2001 many British Columbians are looking for results.

The Treaty Commission, from its unique perspective as keeper of the process, has taken a hard look at the experience of the past eight years and presents its findings in this report. What we offer is an account of the strengths of this process, a blunt assessment of the lessons learned, a review of the parties' fundamental commitments and the extent to which they have been honoured, and finally a prescription for moving forward toward resolution.

In this report the Treaty Commission points the way to speeding up the delivery of the tangible benefits that can flow from treaty making while recognizing that the attainment of comprehensive treaties will be further down the road than many once had hoped.

## WHAT HAS BEEN ACCOMPLISHED

Treaty negotiations have become a fact of life in British Columbia and it's easy to forget what a monumental undertaking they represent.

**They are tripartite**: For the first time in Canadian history, a provincial government has joined with Canada to negotiate the resolution of aboriginal rights and title through government-to-government negotiations with First Nations in a process agreed to by all three parties.

**They are open**: British Columbia treaty negotiations are the most open and transparent negotiations of their kind anywhere in the world.

**They are comprehensive**: When completed, treaties will entail not only transfers of land and cash, but recognition of governance authorities and resource management arrangements as well.

Not surprisingly, they have proven difficult to achieve. And yet, much has been accomplished.

• The parties are building trust in the negotiations as evidenced by the number of First Nations staying at the negotiating table. Before 1991, road blockades, angry rhetoric and litigation filled the daily news. Now, most First Nations in BC have chosen treaty negotiations over direct action and lawsuits.

• The BC treaty process provides a forum for the parties to address aboriginal issues in a constructive manner. With facilitation by the Treaty Commission, the parties have created a formal province-wide process to address major outstanding issues common to all tables, thereby laying the groundwork for agreements to come at individual tables.

• Since negotiations began in December 1993, 42 First Nations have advanced to the agreement-in-principle stage of negotiations, where they are addressing the substantive issues that will form part of their treaties. Twelve offers have been exchanged or tabled between Canada and BC and First Nations on critical issues such as land, resources, and fiscal arrangements. Six First Nations are at earlier stages of negotiations and one is in stage five. The magnitude of this accomplishment has to be measured against the 23 years that it took the Nisga'a Nation to achieve its treaty and the 21 years that have been spent negotiating agreements in the Yukon.

• During the past 18 months, more than 60 interim agreements have been signed, touching on forestry, fisheries, land use planning and economic development, and more are being negotiated.

• Many British Columbians now have a much deeper understanding of treaty issues than they did when the process began.

• A majority of British Columbians continues to support the resolution of these issues through treaty negotiations.

• Resource industries have established new relationships with First Nations including a variety of business arrangements.

• Community-to-community forums, funded in part by the federal government, have successfully brought together municipal governments and neighbouring First Nations to meet and discuss matters of mutual interest.

• Aboriginal people involved in these negotiations, both at the negotiating tables and on the administrative side, have developed new skills and gained expertise, to the lasting benefit of their communities.

## WHY TREATIES ARE TAKING SO LONG

The reasons why treaties are taking so long are discussed in detail in the following pages. Simply stated, these are comprehensive agreements and the negotiations are necessarily complex. There are deep-seated differences between First Nations and the governments of Canada and BC and very different ideas of modern treaty making that must be addressed.

But there have been other unforeseen reasons for delay:

• The Supreme Court of Canada *Delgamuukw* decision in December 1997 sent everyone back to the drawing board. Because the court clearly confirmed the existence of aboriginal title as a right to the land itself, all parties had to re-examine their mandates and decide whether to change their approach to negotiations.

• Negotiations have been in virtual suspension for much of the past 11 months, by reason of the federal election campaign in the fall of 2000, then the period of uncertainty preceding the provincial election call, the election campaign, and the new government's settling-in period. This hiatus was extended by the provincial government's announcement that many important issues were to be put aside pending a referendum and a reference to the courts on the question of self government. The recent decision by the Province to abandon the court challenge brings hope that negotiations will soon resume on the full range of issues.

• The system is overloaded. There are far more First Nations negotiating treaties than was contemplated when the process was designed and the negotiating resources of Canada and BC, but especially BC, have often been overtaxed. The result is long stretches between meetings because negotiators' calendars are full, sometimes with a consequent loss of momentum.

• A high turnover of negotiators at some tables, and on all sides, causes delay as new negotiators have to be brought up to speed. And it takes time for trust to rebuild among the negotiators.

## WHAT WE HAVE LEARNED

Looking back over the last eight years, the question that looms large is "what could we have done better?" Although not an exhaustive list, some of the important lessons that we have learned are set out below:

**1. The 'Big Bang' theory of treaty making needs rethinking.** When this process began, interim measures agreements – incremental steps – were seen as essential to treaty making. But no effort was made to conclude interim agreements. Most people believed that there would be a period of intensive negotiations, at the end of which a series of comprehensive treaties would be signed, putting in place new relationships, new regimes of land ownership and new law-making authorities. That turns out to have been too simplistic. It didn't recognize that new relationships take time and that there are good reasons for wanting to try out new arrangements before they are set in "constitutional cement."

**2. It's taking too long for aboriginal communities to see the benefits of treaty making.** While negotiations go on, First Nations are seeing their traditional territories being depleted of resources, timber being committed to others, and land that should be available for treaty settlements being alienated. At the same time, their debts are mounting. The result is rising frustration, especially among young people who are looking for opportunities to build a future.

**3. The 'expectation gap' is great.** First Nations look to treaties to affirm their place in their traditional territories. This includes measures to support their communities' economic sustainability. Political rhetoric from Canada and BC supports these economic goals but an examination of the offers themselves points to a population-based formula. First Nations see the offers being made as too little to support their vision of the future, while many British Columbians see First Nations' expectations as unaffordable.

**4. There will not be 40 different solutions to some of the problems faced in the 40 sets of negotiations.** Each First Nation is autonomous and each negotiation stands alone. But time and money are not well spent in trying to craft individual approaches when it is clear there will be certain elements fundamental to Canada and BC that will be common to all treaties. Fiscal relations is a good example.

**5. Neither Canada, nor BC nor most First Nations have clearly articulated visions of life after treaties.** This is closely related to the immediately preceding statement and it is true both for the province as a whole, and for the parties at most negotiating tables. Progress is hampered by the lack of a plan for what comprehensive treaties are meant to accomplish at a level of detail that goes beyond broad notions of sustainability, fairness and autonomy.

**6. First Nations' ability to resolve issues in high level talks with federal and provincial ministers has been hampered by the structure of the First Nations Summit.** The Summit is a process, not an organization. It brings together four times a year the chiefs of those First Nations involved in treaty negotiations. Its three-member task group cannot make decisions that would bind individual First Nations without first consulting the chiefs at the next Summit meeting. And the Summit does not have sufficient resources to support activity between quarterly meetings. As a result, the Summit has had difficulty being on an equal footing in talks with the federal and provincial government ministers.

**7. Some First Nations do not yet have the human resources to assume the full range of legislative, executive, judicial and administrative responsibilities that governance entails.** The government of Canada recognizes the inherent right of aboriginal people to govern themselves as they did before European contact, but it is unclear how this right will be exercised by some First Nations who today have very small populations or who do not have a recent history of strong governance.

**8. Reaching treaties with urban First Nations poses new challenges that demand creative solutions.** Private lands will be critical to the settlement of treaties in urban areas where Crown land is limited. As negotiations intensify over governance powers and settlement lands for First Nations in urban areas, the need to address local government concerns is becoming more acute.

**9. The Treaty Commission could be more effective.** The Commission has not enforced all of the formal reporting requirements contained in its policies and procedures. For example, it does not have reports of the parties' consultation and public information efforts so that it can fully evaluate their effectiveness. And the Commission has not sought time-limited commitments from the parties or held them accountable for results. The Treaty Commission only steps in when it identifies a problem through periodic monitoring of the negotiations or when asked to by the parties.

**10. Some First Nations have left the treaty process and others may do so.** The reasons are complex. Certainly there is disappointment at the offers that are being made. There is anxiety over the growing debt burden as First Nations continue to borrow money to support their negotiations. The *Indian Act* system of biennial band elections undermines political stability so that in some cases, the chief and council whose support for negotiations is so important are replaced every two years.

## COMMITMENTS TESTED

Treaty negotiations in BC are founded upon the 19 commitments that were made by Canada, British Columbia and the First Nations Summit. Recommended in 1991 by the British Columbia Claims Task Force — a tripartite body — they were unanimously accepted as the basis for an unprecedented, made-in-BC treaty process. A review of the process, then, requires an assessment of the extent to which the parties have honoured those commitments — or any further or different commitments they have made.

Several of the 19 commitments address the need for a process open to all First Nations and facilitated by an independent Treaty Commission. Much of that work has been accomplished — the Treaty Commission was established early and the negotiation process is in place. The Treaty Commission is firm in the belief that the process itself is fundamentally sound, though it does remain a work in progress.

However, the parties need to make greater efforts to live up to the commitments set out below.

**A new relationship**

***The parties agreed: "First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding through political negotiations."***

In entering negotiations, the parties recognize one another as legitimate governments representing the interests of their constituents. This is the starting point in building a new relationship. Eventually, comprehensive treaties will give that relationship full expression.

In the meantime, mutual trust, respect and understanding will grow as the parties demonstrate their continuing commitment to the process. Interim measures agreements are an effective way to demonstrate that commitment, but progress here is only recent. The Treaty Commission has more to say about interim measures later in this review.

**Significant issues**

***The parties agreed: "Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship."***

If the negotiations do not address the issues that each party considers critical, treaties can never be successfully concluded. One issue that slows and even stalls the progress of negotiations is compensation, which Canada and BC have declined to address. This constitutes a serious failure of commitment on the part of the governments of both Canada and BC.

First Nations argue that compensation is an issue significant to the new relationship and it should be addressed at the treaty table. Canada and BC argue that compensation is a legal concept and so has no place in a political negotiation, and that treaties are about the future, not about the past.

Musqueam and Quatsino negotiations have been stalled over this issue. Other First Nations reluctantly signed framework agreements that don't specifically include compensation as an issue for negotiation because they could not afford further delays.

Saying that a party must be free to introduce an issue is not to say that the parties must arrive at an agreement on that particular issue. There may be some issues on which they ultimately don't agree — and yet there may be enough common ground that a treaty is possible. It is the refusal to engage in the discussion that breaches a fundamental commitment.

Compensation has now been referred to a high level working group for discussion. This is a positive step, though the issue still is not being addressed at individual tables.

**A flexible process**

***The parties agreed: "A six-stage process be followed in negotiating treaties."***

The six stages of negotiations were designed to promote efficient and effective negotiations. The process now needs to be more flexible. We have to pay more attention to the early formulation of a treaty vision and mandate by all three sides in the negotiations. In the past, this has been left to later in the process, so that time and money and peoples' energies are spent working towards ill-defined goals.

Three areas of the process requiring attention are:

**1.** The British Columbia Treaty Commission Agreement, signed by the parties, calls for the Commission to assess the parties' readiness to move from stages two to three, which is where the framework agreement is negotiated. The Commission sees a need for monitoring the parties' readiness throughout the process. First, the resources and mandate needed to negotiate a framework agreement are quite different from those required for more substantive agreement-in-principle talks. Second, community support and political commitment can fluctuate from time to time on all sides, and this is reflected in the level of resources that a party is willing or able to commit to negotiations.

**2.** The process is designed so that parties sign a framework agreement and then negotiate an agreement in principle (AiP) that contains substantially all the components of a comprehensive treaty. Recently, it has been recognized that there are certain elements of treaties that need to be discussed at the level of the First Nations Summit and the federal and provincial ministers, where options can be developed for consideration at individual tables. Fiscal relations is such an example. First Nations should have the option of signing a "slim AiP" which contains important elements of their treaty but leaves a defined set of issues for resolution in those high level talks. However, current funding arrangements serve as a disincentive. Up to the signing of an AiP, the money First Nations borrow to support their negotiations is interest free until the loan becomes due, while funds advanced after an AiP carry interest charges from the date of advance. Loans are normally due only when a treaty is signed, or seven years after an AiP, or 12 years after the first loan advance.

The parties need to address this so that funding arrangements do not restrict the flexibility of the process.

**3.** Some First Nations need the opportunity to step aside from treaty negotiations for a time, to focus on preparing themselves for the many challenges involved in negotiating and implementing a comprehensive treaty. Again, funding arrangements discourage this and the result is often ineffective negotiations.

**Open to all**

***The parties agreed: "The treaty negotiation process be open to all First Nations in British Columbia." And***

***"The organization of First Nations for the negotiations is a decision to be made by each First Nation."***

Together, these two recommendations have serious implications for all the parties in negotiations. These are voluntary political negotiations. No First Nation that meets the process' definition of First Nation is to be barred. In fact, recently, the Treaty Commission admitted the Kwayhquitlum First Nation to the process but Canada and BC refused to negotiate with them on the basis of their small population — fewer than 100 members.

Until Canada, BC and First Nations agree to revisit the recommendation that the process be open to all First Nations or revise the definition of First Nations agreed to for treaty purposes, the parties must honour their commitment to this recommendation. In fact, the definition of a First Nation for treaty purposes — a governing body, a territory and a mandate from its members — is loose and open to many interpretations. Consequently, instead of the 30 First Nations in negotiations envisioned by the Task Force, there are now 49 First Nations involved at 40 negotiating tables. The situation could become more acute if more First Nations decide to enter the process.

The difficulties caused by this proliferation are twofold. The greater than expected numbers has taxed the negotiating resources of Canada and BC. But more significantly, the Principals have not squarely addressed the meaning of self governance for First Nations with very small present-day populations, and the challenges they face in negotiating comprehensive treaties.

**Overlaps**

***The parties agreed: "First Nations resolve issues related to overlapping traditional territories among themselves."***

The Treaty Commission has urged the governments of Canada and BC not to conclude agreements in principle with First Nations until overlap issues have been resolved or efforts exhausted. Otherwise, progress is ultimately impeded and the integrity of the process is called into question where the First Nation does not have the authority to enter into an agreement. Only a small number of overlaps have been resolved through agreement on a boundary or shared area. The First Nations Summit did develop a protocol for resolution of these disputes but to the Treaty Commission's knowledge it has never been used. First Nations have not had much success in living up to this commitment and must be more proactive in resolving overlaps.

**Dispute resolution**

***The parties agreed: "The Commission provide advice and assistance in dispute resolution as agreed by the parties."***

This commitment is one that has largely been met, but one that the Treaty Commission urges the parties to reconsider. In many cases, the Treaty Commission does assist, often successfully. But the Treaty Commission is often constrained by the fact that all three parties must agree to seek its involvement. The Treaty Commission suggests that this commitment be altered so that any one party at a table may invite the Treaty Commission to attempt to facilitate the resolution of a problem.

The other constraint on its activity is financial. At present the Treaty Commission does not have the resources to provide a higher level of service.

**Interim measures**

***The parties agreed: "The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process."***

Interim measures have several purposes: they can provide a measure of certainty for all parties over land and resources; they can protect key First Nation lands and resources while a treaty is being negotiated; they can allow the parties to test solutions before building them into constitutionally-protected documents; they can bring economic benefits to communities during negotiations. Whatever the specifics, interim measures agreements build trust by demonstrating the parties' continuing commitment to negotiating treaties.

In the past, the Treaty Commission has battled Canada and BC over their reluctance to negotiate interim measures. Failure over several years to attain an interim measure protecting its interests in the Pavilion Creek watershed was a significant factor in Ts'kw'aylaxw First Nation's withdrawal from the treaty process last year.

More recently, with pressure from industry, some 60 agreements were signed. Only one of these was a land protection agreement; some were for land use planning or economic development projects; many were studies in support of negotiations. The provincial government has recently signalled a willingness to pursue more land and resource protection measures.

However, despite the fact that the parties did commit to negotiate such interim measures "before or during the treaty negotiations" Canada and BC had often taken the position that they would only agree to interim protection measures during the late stages of negotiations.

Part of the impetus for more interim agreements has come from a recent cost-sharing agreement between Canada and BC. Because interim measures are largely land and resource based, their cost falls disproportionately on BC, as the holder of Crown title to most of BC. The federal-provincial agreement allows for more equitable sharing of the burden.

In summary, this is a commitment that was breeched in the past, but which the parties are showing a new and significant willingness to honour.

# LOOKING FORWARD

# A treaty, like any new relationship, takes time. More time than we thought.

## COMPREHENSIVE TREATIES MUST BE BUILT OVER TIME

**A prescription for moving forward**

The treaty process today is at risk of being crushed under the weight of unrealistic expectations. When the Treaty Commission opened its doors in December 1993, there was an expectation that we would see treaties ratified by the end of the decade. That has not happened. Looking back today, the Treaty Commission believes not that the process was too slow, but that it tried to accomplish too much, too soon.

Treaty negotiations in BC were launched with a "Big Bang" vision of how they would proceed. The expectation was that each set of negotiations would result, relatively quickly, in a comprehensive treaty. What has become clear is that treaty negotiations were, and are, simply too complex for speedy solutions and that British Columbians — aboriginal and non-aboriginal — need time to prepare for the new relationships that will result.

As keeper of the treaty process, the Treaty Commission has reflected on the course of negotiations and offers the following prescription for moving forward toward the ultimate goal: the achievement of comprehensive treaties.

## BUILD TREATIES INCREMENTALLY

We need to shift our focus away from a treaty as a one-time achievement, and see treaties instead as the embodiment of new relationships that can be built over time. Interim measures, ministerial-level discussions to resolve certain issues, "slim AiPs," governance initiatives, time outs to allow for community development — all of these can be the building blocks of treaties.

This approach need not be an impediment to attaining the certainty that many see as the ultimate goal of treaty making. What "certainty" really means in this context is "predictability" and that can never be delivered by a piece of paper. Predictability comes from familiarity and from practices that develop through a history of working together. The certainty all parties want can be achieved incrementally.

A building block approach also meets the concerns of those who worry that treaties will set in "constitutional concrete" new governance arrangements that have never been tested.

***The Treaty Commission recommends that First Nations, Canada and BC shift the emphasis in treaty making to incremental treaties–building treaties over time–so that when a final treaty is signed, the new relationships necessary for success will largely be in place.***

The Commission has identified several elements to this new approach. There likely are more.

**1. Negotiate more interim protection agreements.** Until the year 2000, the Claims Task Force recommendation regarding interim measures was largely ignored. Over the past 18 months more than 60 interim measures agreements have been signed, including one land protection agreement.

A land protection agreement is a formal agreement among Canada, BC and a First Nation to protect First Nation interests in land that will ultimately form part of a treaty settlement, while negotiations progress. For example, a piece of Crown land that is particularly significant to a First Nation might be protected from sale or from development, on the premise that it will ultimately form part of treaty settlement lands.

If treaty making is approached as an incremental process, land protection can be an important tool for building trust and for preserving the parties' ability to deliver an acceptable package when it is time for determination of treaty settlement lands. This will be particularly critical in the case of urban treaties, where Crown land is at a premium.

***The Treaty Commission recommends that Canada and BC negotiate interim measures agreements that can serve as the building blocks of treaties, and provide sufficient funding for their implementation.***

***The Treaty Commission further recommends that interim measures agreements protecting key lands and resources be given priority at those tables where failure to address these issues would undermine negotiations.***

**2. Intensify high level talks on major issues.** Each First Nation negotiates its own treaty. However, there are certain issues that cannot have different solutions at each table.

In the wake of the *Delgamuukw* decision, the Principals — represented by the federal and provincial ministers, and the First Nations Summit task group — began meeting on an irregular basis to discuss some of the challenges facing the treaty process itself. Recently, these meetings have been supported by the work of senior officials and targeted working groups. Indications are that these high level discussions can be an effective engine to drive the process forward.

For example, the *Indian Act* income tax exemption was identified as an issue that is unlikely to be resolved at individual tables. Moreover, it became clear that this is just one element of a complex set of intergovernmental fiscal relations that will be created by treaties. So, the Principals appointed a tripartite working group to explore the entire area of post-treaty fiscal relations and to develop options for

consideration by individual tables as they approach comprehensive treaties. The First Nations Summit has appointed to the working group a lead negotiator who has expertise in the area and has established a secretariat, with appropriate resources, to support the discussion and to share information amongst First Nations.

A challenge to this process is posed by the asymmetrical nature of the Principals. Ministers for Canada and BC are mandated to speak, within certain parameters, for their governments. When they come to a meeting they have been briefed by their officials and are prepared to make decisions. The three-member First Nations Summit task group represents First Nations. The Summit is a periodic gathering of chiefs; it has no constitution and very little infrastructure. The chiefs come together every three months but not much work is carried on between meetings and there is no central storage of information. The elected task group generally has no mandate except to attend meetings with the ministers, present First Nation interests and report back to the Summit. This lack of structure and flexible mandate has impaired the First Nations' ability to respond to issues in a timely manner and to take full advantage of the opportunities offered by these high level discussions.

A further imbalance is illustrated by the fact that federal and provincial negotiation teams each meet weekly to discuss strategies and mandates and to exchange information. First Nations negotiators on the other hand meet four times a year. Each team has its own set of experts and advisors and there is no central repository for information.

For Canada's part, it has often been difficult to schedule meetings of the political leaders because of the heavy demands from every part of the country on the federal minister's time.

***The Treaty Commission recommends that the First Nations Summit, Canada and BC commit all the necessary resources–including the assignment of experienced negotiators–to high level discussions that will address elements that will be common to many treaties, to develop options for consideration at individual negotiations. Senior officials and working groups are important supports for this process, but the political leaders must meet at least quarterly to give direction and maintain momentum.***

***The Treaty Commission recommends that the First Nations Summit direct resources to support the work of the task group, provide for meaningful exchanges of information among negotiators, and mandate the task group so that they can engage effectively with the federal and provincial ministers.***

***The Treaty Commission recommends that when a Principal is unable to meet the commitment to quarterly meetings, an elected political alternate be appointed, with full authority to act on behalf of the Principal.***

**3. Negotiate "slim AIPs"**

While certain elements of treaties are being addressed at the high level discussions described above, some First Nations will want to conclude the other parts of an agreement in principle — the land and cash components for example. Then, during stage 5 (final agreement negotiations) the parties can examine the options developed by those high-level discussions and adopt such elements as are appropriate — or reject them but take advantage of the work that has been done to develop another, mutually agreeable approach.

Rather than hold up individual negotiations while these broader talks continue, "slim" agreements in principle can be signed so that benefits begin to flow earlier rather than later to First Nation communities and so that there is certainty of ownership over land and resources.

An incentive for adopting this approach is that the availability of treaty-related measures is linked to achievement of an agreement in principle. Treaty-related measures are a recently developed subset of interim measures supported by federal and provincial funding. These measures can include pre-implementation of treaty provisions.

At the same time, current funding arrangements provide a powerful disincentive for First Nations signing an agreement in principle before all issues are resolved. When the BC treaty process was initiated, First Nations began to accept loan funding to support their negotiations on the basis that the money would be effectively interest-free. Loan funds advanced before an agreement in principle is signed are interest free until the loan becomes due, while funds advanced after an agreement in principle carry interest charges from the date of advance. Loans are normally due only when a treaty is signed, or seven years after an agreement in principle, or 12 years after the first loan advance.

***The Treaty Commission recommends that Canada and BC change funding arrangements so that First Nations can conclude a "slim" agreement in principle earlier in the treaty process – without resolving all of their treaty issues and without incurring additional interest charges on loans.***

**4. Give priority to governance initiatives.**
A reliable, open and accountable system of governance is critical to any nation's economic and social development. First Nations in BC, whose traditional governance systems have long since been replaced by the *Indian Act*, need time and support to develop modern governance structures that can support prosperous futures.

The Treaty Commission recommends three initiatives:

***A conference to review governance models, including lessons learned and best practices from Canada and around the world;***

***A province-wide table to identify common and conflicting interests, guiding principles, and options for the governance component of treaties; and***

***A permanent institute of governance to do research, develop workshops and training courses, disseminate information and maintain an inventory of existing governance initiatives.***

**5. Allow "time-outs" for the development of human resources, governance and vision.**
Some interim measures are aimed not at preserving real estate, but at creating human capital. There are First Nations in BC that need time and money to focus on developing human resources, governance and a vision for their communities, without accumulating further debt and without the continuing pressure of supporting tripartite negotiations while they do that.

Current funding arrangements do not encourage First Nations to take time out from treaty negotiations. Provision must be made to suspend interest charges during the time-out and contribution funding must be available to First Nations for this purpose.

This approach would also relieve the pressure on the resources of Canada and BC, allowing negotiators to focus on those tables where First Nations are ready for intensive negotiation.

***The Treaty Commission recommends that Canada and BC provide contribution funding to allow First Nations to develop their human resources, governance and vision without accumulating further debt and without the continuing pressure of supporting tripartite negotiations.***

## BE CANDID IN NEGOTIATIONS

There is no common understanding of the parameters and fundamental goals of treaty negotiations and this is causing mounting frustration on all sides of the treaty table.

In some cases First Nations have an unclear vision about their own futures, making it difficult to work towards a successful treaty settlement. More problematic are the conflicting messages delivered by the governments of Canada and BC as to their goals in treaty making.

Treaty negotiations use an interest-based negotiation model where negotiators spend time exploring individual First Nations' interests in economic and social development, implicitly supporting the assumption that treaty offers will reflect those interests. However, a review of the offers made to date points to a population-based formula as the primary basis for the calculations by the governments of Canada and BC.

Political rhetoric about sustainable communities and economic self-sufficiency gives rise to First Nations' expectations that are dashed when offers are presented by Canada and British Columbia.

No negotiating party should be compelled to divulge its bottom line before it is ready, but First Nations who understand sooner rather than later the basis on which offers will be made can make rational decisions as to whether the treaty process promises enough to warrant continued investment of the financial and personal resources that such negotiations demand.

The perception that treaty making requires extinguishment is keeping some First Nations out of the treaty process. Despite a tripartite effort by Canada, BC and the First Nations Summit to change this view, and the BC Claims Task Force statement that certainty can be achieved without extinguishment, the perception remains.

***The Treaty Commission recommends that First Nations, Canada and BC all articulate clearly their goals in treaty making and their vision of British Columbia after treaties.***

## RESPECT THE TRIPARTITE PROCESS

The BC treaty process is founded on the commitments of the three Principals — First Nations, Canada and BC. Unilateral or bilateral actions that run counter to those commitments weaken the process and destroy the trust that is so hard-won.

There are several recent examples:

- Canada and BC, as mentioned above, refused to negotiate with the Kwayhquitlum First Nation even though it had met the criteria laid down by all three Principals.

- On occasion, a negotiator for Canada or BC has sought to deny permission to the Treaty Commission to attend a negotiation session. This is an unacceptable interference with the Treaty Commission's ability to perform its statutory obligation to monitor and facilitate negotiations. If requested by all parties the Treaty Commission will, of course, respect the wishes of the negotiators for a private meeting.

- BC has recently unilaterally indicated that it will conduct a review of the Treaty Commission. As a result, it will only approve a one-year budget rather than the five-year budget agreed by Canada, BC and First Nations. As noted in the BC Claims Task Force Report, "A commission which must constantly seek funding or protect its funding sources will be distracted from its task."

The British Columbia Treaty Commission Agreement calls for a tripartite review of the Treaty Commission's effectiveness every three years. In spite of calls from the Treaty Commission for such a review, it has never been done.

***The Treaty Commission recommends that the Principals respect the tripartite nature of the BC treaty process by not attempting to alter fundamental commitments without the agreement of all three.***

***The Treaty Commission recommends that the Principals undertake as soon as practicable a tripartite review of the Treaty Commission's effectiveness, as called for in the British Columbia Treaty Commission Agreement.***

## ADDRESS URBAN ISSUES

Treaty settlements in urban areas pose challenges not faced before either in British Columbia or elsewhere in the world.

Public support for treaties has generally been centred in urban areas. It may be assumed that it is easier for people to support settlements that will not directly affect their lives. As negotiations progress with First Nations whose traditional territories encompass large parts of Vancouver, Victoria and other population centres, the depth of that public support may be tested.

Private lands will be critical to the settlement of treaties in urban areas where Crown land is limited. While most parties have long agreed that private lands will not be expropriated for treaty purposes, the issue of a willing buyer/willing seller has long been accepted at the negotiation tables but is now stirring controversy. Local governments are increasingly concerned that if private lands become treaty lands (through purchase and sale on a willing buyer/willing seller basis) their local tax base will be eroded, and along with it, their ability to provide services to residents and address community planning issues.

BC's principles for treaty negotiations stipulate that local government participation in the treaty process is guaranteed. As negotiations intensify over governance powers and settlement lands for First Nations in urban areas, the nature and extent of that local government participation may become more and more contentious.

***The Treaty Commission recommends that the Principals clarify the role of local government in tripartite treaty negotiations, and work with local government to address problems that arise from private land, acquired from willing sellers, being incorporated into treaty settlement lands.***

***The Treaty Commission further recommends that the Principals commit the resources necessary to fully inform the public about complex treaty issues, to build support for treaty negotiations in urban areas where land issues will be contentious.***

## IMPROVE CONSULTATION, INFORMATION

British Columbians are much more aware of treaty issues today than they were when the process began. Main table meetings are open to the public and are sometimes broadcast on cable television. Local government and interest groups have input through advisory committees at local, regional and province-wide levels. News of developments in negotiations is carried in all major media. The Treaty Commission's website is visited several thousand times each month; it mails out printed material to thousands of people at least three times a year and its touch-screen displays have been heavily used at museums, shopping malls, ferry terminals and public libraries throughout the province. But public understanding still falls far short of what is needed to support successful resolution of such long outstanding issues.

The Treaty Commission has produced, and supported the production by others, a variety of materials for use in schools. However, they are used at the discretion of teachers and it is unclear how widely they are disseminated.

Public consultation promotes public education and also depends on it. Even though the consultation process is extensive, tensions are arising from a misunderstanding in some quarters as to the real meaning of public consultation.

It has been the case that only the provincial government consults with local governments. The Principals should consider whether Canada and First Nations should take part in that consultation. The Treaty Commission has developed a proposal for a form of consultation with communities, both aboriginal and non-aboriginal, that it refers to as "regional visioning." That proposal has been presented to the Principals and the Treaty Commission looks forward to a response.

***The Treaty Commission recommends that the Principals seek expert advice on ways to improve the consultation process now in place in treaty negotiations, including a set of standards that will clarify the rights and responsibilities inherent in a public consultation process.***

***The Treaty Commission further recommends that the Principals urge educators to more fully integrate into the classroom discussion of modern-day treaty making in British Columbia and that the Government of British Columbia commit the funding necessary to make new and existing educational resources on treaty making available to teachers for use in the classroom.***

## NEGOTIATE DURING REFERENDUM

The Treaty Commission has spoken before about the difficulty of obtaining meaningful public input on a complex issue through a referendum. Without knowing the question, or questions, posed to British Columbia voters, it is impossible to predict the impact a referendum will have on the negotiation process. What we can say is this: the issues these negotiations must address have largely been laid down in law. Those will not change, referendum or no referendum. Nor will the 19 commitments made by Canada, BC and First Nations as the foundation for this process. Further, early on in the treaty process BC established and published a set of principles to guide its negotiations.

First Nations have borrowed $150 million to negotiate over the past eight years, within these established parameters. It is entirely appropriate, and even healthy, for any party to refine its mandate and guiding principles and to build support among its constituents. However, if the BC government's guiding principles are to change in a fundamental way, there could be irreparable damage to the negotiation process. At the very least, debt arrangements between First Nations and Canada and British Columbia would need to reflect the change.

In the meantime, BC has severely restricted the mandate of its negotiators. With the recent announcement that the provincial government will not pursue a challenge to the Nisga'a treaty in the courts, it is to be hoped that these restrictions will be lifted.

***The Treaty Commission recommends that the Government of British Columbia extend as far as possible the range of issues remaining open for negotiation, while it awaits the results of its referendum.***

## WHAT IF WE DON'T DO TREATIES

In the past, the cost of our collective failure to resolve the BC land question has been almost entirely borne by aboriginal people. This is no longer the case. We will all bear the cost if we fail this time. A breakdown in negotiations will lead to continued economic and social uncertainty and more court cases and confrontation.

Failure at this point would be especially unfortunate given the huge investment of time and money, not to mention sheer human effort and goodwill – and given our achievements to date. Much of the work has already been done. The road to treaties is before us. With commitment, political courage and creativity, we will succeed.